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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,091	05/15/2001	Andrew C. Gilbert	00-1028	2562
63710	7590	08/05/2008	EXAMINER	
DEAN P. ALDERUCCI			AKINTOLA, OLABODE	
CANTOR FITZGERALD, L.P.				
110 EAST 59TH STREET (6TH FLOOR)			ART UNIT	PAPER NUMBER
NEW YORK, NY 10022			3691	
			MAIL DATE	DELIVERY MODE
			08/05/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/858,091	GILBERT, ANDREW C.
	<b>Examiner</b>	<b>Art Unit</b>
	OLABODE AKINTOLA	3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 May 2008.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3-6,11,12,15,17-20,25,26,29,31-34,39,40,43,45-48,53 and 54 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3-6,11,12,15,17-20,25,26,29,31-34,39,40,43,45-48,53 and 54 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11, 25, 39 and 53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation “canceling the selected bid or offer for the third item *simultaneously* with the shift of the prices for the selected bids or offers” in this claim does not have support in the originally filed disclosure.

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### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 5, 29, 31 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Ojha et al (US 6598026) (“Ojha”).

Re claims 1 and 29: Ojha teaches a method and system comprising: receiving a plurality of bids and offers from a user, the plurality of bids and offers comprising at least one bid or offer for a first item and at least one bid or offer for a second item different than the first item, each of the plurality of bids and offers having a specified price and size (Figs. 9, 11, Buyer Id 147); causing an interface screen to be displayed at a workstation associated with the user, the interface screen comprising a listing of the plurality of bids and offers received from the user each individually selectable for the user to select multiple of the plurality of bids and offers displayed (Figs. 9, 11); receiving from the user a selection of the bid or offer for the first item and the bid or offer for the second item, and instruction and a value for shifting the price of each of the selected bids or offers (col. 15, lines 57-67, Fig. 13D: “Buyer specific” and “Reduce Ask by”); and shifting simultaneously, in response to the instruction, the price of each of the selected bids or offers by one of an absolute value and a relative value based on the instruction and value received from the user (col. 15, lines 31-67).

Re claims 3 and 31: Ojha teaches wherein the instruction from the user comprises an indication to apply a relative shift to increase or decrease the price of the plurality of bids or offer and the relative value comprises a percentage, and wherein the price of each of the selected plurality of bids or offers are applied to increased or decreased based on the specified percentage the price of

each of the plurality of bids or offers in the selection (col. 15, lines 57-67, Fig. 13D: “Buyer specific” and “Reduce Ask by”).

Re claims 5 and 33: Ojha teaches wherein shifting is performed automatically (col. 7, lines 49-50).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4, 11-12, 15, 17-19, 25-26, 32, 39-40, 43, 45-47 and 53-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ojha in view of Buist (US 6408282) (“Buist”).

Re claims 4 and 32: Ojha teaches wherein the interface screen comprises at least one element for the user to select a first instruction from a plurality of instructions comprising an absolute shift instruction and a relative shift instruction, and at least one element for the user to select a second instruction from a second plurality of instructions comprising instruction to decrease the price of the selected bids or offer (col. 15, lines 57-67, Fig. 13D). Ojha does not explicitly teach instruction to increase the price of the selected bids or offers. However Ojha teaches bid adjustment (col. 18, lines 13-17). Buist teaches instruction to increase the price of the selected bids or offers (col. 28, line 63 - col. 29, line 11). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ojha to include this feature. One would have been motivated to do so in order to allow the user to input desired price increment change, thereby enhancing the functionality of the system.

Re claims 11 and 39: Ojha teaches receiving from the user a selection of a bid or offer for a third item from the plurality of bids and offers (Fig. 11). Ojha does not explicitly teach receiving instruction from the user to cancel the bid or offer for the third item, and canceling the selected bid or offer for the third item simultaneously with the shift of the prices for the selected at least one of the plurality of bids or offers. Buist teaches receiving instruction from the user to cancel the bid or offer for the third item, and canceling the selected bid or offer for the third item simultaneously with the shift of the prices for the selected at least one of the plurality of bids or offers (Fig. 7, RN {730}; col. 28, line 63 – col. 29, line 11; col. 13, lines 45). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ojha to include

this feature. One would have been motivated to do so in order to allow the user to cancel selected bids or offers that are not desirable, thereby enhancing the functionality of the system.

Re claims 12 and 40: Ojha teaches the interface screen comprises at least one element for the user to select a first instruction from a plurality of instructions comprising an absolute shift instruction and a relative shift instruction, and at least one element for the user to select a second instruction from a second plurality of instructions comprising instruction to decrease the price of the selected bids or offer for the first and second items.

Ojha does not explicitly teach at least one element for the user to select a second instruction from a second plurality of instructions comprising instruction to increase the price of the selected bids or offers for the first and second items and at least one element for the user to select a third instruction to cancel the bid or offer for the third item. However Ojha teaches bid adjustment (col. 18, lines 13-17). Buist teaches instruction to increase the price of the selected bids or offers (col. 28, line 63 - col. 29, line 11) and an element for the user to select an instruction to cancel the bid or offer for the an item. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ojha to include these features. One would have been motivated to do so in order to allow the user to input desire price increment change and to allow the user to cancel selected bids or offers that are not desirable, thereby enhancing the functionality of the system.

Re claims 15 and 43: Ojha teaches a method and system comprising: receiving a plurality of bids and offers from a user, the plurality of bids and offers comprising at least one bid or offer for a

first item and at least one bid or offer for a second item different than the first item, each of the plurality of bids and offers having a specified price and size (Figs. 9, 11, Buyer Id 147); causing an interface screen to be displayed at a workstation associated with the user, the interface screen comprising a listing of the plurality of bids and offers received from the user each individually selectable for the user to select multiple of the plurality of bids and offers displayed (Figs. 9, 11); receiving from the user a selection of the bid or offer for the first item and the bid or offer for the second item, and instruction and a value for shifting the price of each of the selected bids or offers (col. 15, lines 57-67, Fig. 13D: “Buyer specific” and “Reduce Ask by”).

Ojha does not explicitly teach shifting simultaneously, in response to the instruction, the size of each of the selected bids or offers by one of an absolute value and a relative value based on the instruction and value received from the user. However Ojha teaches shifting simultaneously, in response to the instruction, the *price* of each of the selected bids or offers by one of an absolute value and a relative value based on the instruction and value received from the user (col. 15, lines 31-67). Buist teaches shifting the size of each of the selected bids or offers by one of an absolute value and a relative value based on the instruction and value received from the user (col. 28, line 63 - col. 29, line 11). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ojha to include this feature. One would have been motivated to do so in order to adjust the size of each bids or offers as part of the negotiation process in the same manner as the price of the bids or offers are adjusted, thereby enhancing the functionality of the system.

Re claims 17 and 45: See claims 15 and 3 analyses, *supra*.

Re claims 18 and 46: See claims 15 and 4 analyses, supra.

Re claims 19 and 47: See claims 15 and 5 analyses, supra.

Re claims 25 and 53: See claims 15 and 11 analyses, supra.

Re claims 26 and 54: See claims 15 and 12 analyses, supra.

Claims 6 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ojha in view of Alaia et al (US 6199050) (“Alaia”)/ McCausland et al (US 5243331) (“McCausland”).

Re claims 6 and 34: Ojha does not explicitly teach wherein the listing of the plurality of bids and offers comprises an indication of a status of each of the plurality of bids and offers, and wherein the status of the selected bids or offers comprises an active status, the method further comprising receiving from a user instruction to change the status of the selected bids or offers from the active status to a suspended status, in which hits and takes are blocked from being performed, and changing the status of the selected bids or offers based on the instruction. Alaia/ McCausland teaches wherein the listing of the plurality of bids and offers comprises an indication of a status of each of the plurality of bids and offers, and wherein the status of the selected bids or offers comprises an active status, the method further comprising receiving from a user instruction to

change the status of the selected bids or offers from the active status to a suspended status, in which hits and takes are blocked from being performed, and changing the status of the selected bids or offers based on the instruction (Alaia: abstract, col. 9, lines 42-55, col. 17, lines 58 through col. 18, line 14; McCausland: col. 19, line 65 through col. 20, lines 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ojha to include these steps as taught by Alaia/ McCausland. One would have been motivated to do so in order to allow a user to “freeze” an auction so that no bidder is able to submit bids during the suspended status, thus enhancing the effectiveness of the system.

Claims 20 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ojha in view of Buist and further in view of Alaia.

Re claims 20 and 48: See claims 15 and 6 analyses, supra.

### ***Response to Arguments***

Applicant's arguments filed 5/29/2008 regarding 35 U.S.C. 112 (1) have been fully considered but they are not persuasive.

Applicant argues that support for the limitation can be found at page 3, lines 1-10. Examiner respectfully disagrees with Applicant's characterization of the passage. The passage states:

Furthermore, the present invention may provide users with multiple bid/offer interactions. For example, a user may choose to simultaneously shift a price or a size of a plurality of bids

and/or offers, simultaneously cancel a plurality of bids and/or offers, ***or*** simultaneously suspend and/or make active a plurality of bids and/or offers. The ability to apply changes to a plurality of bids and/or offers simultaneously may provide the user with time efficient ***bid/offer shifting*** (emphasis mine).

Examiner's interpretation of the passage is that the simultaneously shifting, simultaneously canceling or simultaneously suspending are carried out in the alternative. The bold "***or***" is indicative that the steps are carried out in the alternative and not at the same time as alleged by Applicant. The ability to apply changes refers to bids/offers shifting and not canceling or suspending. The rejection is hereby maintained.

Applicant argument regarding the Navani reference is persuasive. The reference is hereby withdrawn.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OLABODE AKINTOLA whose telephone number is (571)272-3629. The examiner can normally be reached on M-F 8:30AM -5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OA

/Hani M. Kazimi/  
Primary Examiner, Art Unit 3691